IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Bail Appl..No. 3722 of 2007()

CRIME NO.172/2005 OF KANAKAKKUNNU POLICE STATION

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: PETITIONER/3RD ACCUSED:

SIVAN PILLAI, S/O. SANKARAKURUP,
AGED 45 YEARS, ULPALASYA VEEDU, KANNIMMEL MURI,
CHEPPAD, MUTHUKULAM VILLAGE.

BY ADV. SRI.G.PRIYADARSAN THAMPI

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTING SUB INSPECTOR OF POLICE,
KANAKAKKUNNU POLICE STATION, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3722 of 2007

Dated this the 20th day of June, 2007

ORDER

Petitioner is accused No.3 in a prosecution, inter alia, under Section 452 Cr.P.C. That is the only non bailable offence alleged. Investigation is complete. Final report has already been filed. The petitioner is employed abroad. He did not receive any notice or summons to appear before the learned Magistrate. In these circumstances, he had not appeared before the learned Magistrate. But the learned Magistrate has issued coercive processes to compel the presence of the petitioner. The petitioner is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He further prays that appropriate directions under Section 438 Cr.P.C and/or 482 Cr.P.C issued in favour of the petitioner.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be issued in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

5. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-